ONTARIO SECURITIES COMMISSION

PERSPECTIVES

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inside...

FALL 2000

FEATURE

Statutory Civil Remedy for Investors in the Secondary Markets

The CSA has published amendments to the Provincial securities legislation that would give investors in the secondary markets the right to sue any public company and key related persons for making public misrepresentations about the company or for failing to make required timely disclosure. A number of the CSA members plan to recommend the amendments to their respective governments. At this time, however, none of the governments have made a decision to proceed with the amendments.

Scope of Remedy

The proposed legislative remedy would give secondary market investors a limited right of action against an issuer of securities, its directors, responsible senior officers, "influential persons" (such as large shareholders with influence over disclosure), auditors and other responsible experts. Investors would have the right to seek limited compensation for damages suffered at a time when the issuer had made, and not corrected, public disclosure (either written or oral) that contained an untrue statement of a material fact, or failed to make required material disclosure.

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THE OSC WEB SITE, WWW.OSC.GOV.ON.CA INCLUDES:
INFORMATION ON THE OSC; INVESTOR INFORMATION; RULES AND REGULATIONS; ENFORCEMENT INFORMATION AND MARKET PARTICIPANTS.

Perspectives welcomes letters to the Editor. Letters should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8

MERGERS AND ACQUISITIONS UPDATE

M&A Submissions to The Five-Year Review Committee

On August 11, 2000, the M&A Team at the Ontario Securities Commission made a written submission to the Securities Review Advisory Committee (the "Five-Year Review Committee") in response to the committee's request for comments regarding proposals for reform of Ontario's securities laws. (A copy of the M&A Team's full submission can be downloaded from the OSC's website, www.osc.gov.on.ca., where it is published with other comment letters submitted to the Five-Year Review Committee.)

Seventeen years have passed since the last comprehensive review of the provisions of the Securities Act (the "Act") relating to take-over bids and issuer bids. Although the legislation in this area generally has served Ontario capital markets well, the M&A Team identified a number of issues that merit further consideration.

The purpose of the submission was to identify these issues for the Five-Year Review Committee and recommend a path forward for their resolution.

In the submission, the issues were categorized as follows:

- issues where the M&A Team recommends legislative amendment;
- issues where legislative amendment would be required but which the M&A Team believes require further study before any such amendment is undertaken; and,
- issues for which there is adequate rule-making authority but that require further study and analysis before any rules are made.

Legislative Amendment Recommended

The M&A Team recommended that the Act be amended as follows:

- The provisions of the Act giving the OSC rule-making power should be amended to permit the OSC to vary the definition of "take-over bid" in the Act in order to permit the OSC to make rules in respect of offers to acquire less than 20% of the outstanding securities of a class. The purpose of this amendment would be to enable the OSC to make rules regulating mini-tenders and other broadly disseminated offers to acquire less than 20% of a class of securities, which is the current threshold for take-over bid regulation under the Act.
- The provisions of the Act giving the OSC rule-making power should be amended to permit the OSC to make rules in respect of offers to acquire securities that are convertible into voting or equity securities. The current application of the Act's take-over bid and issuer bid provisions to such securities could be clearer.

Further Study Required Before Any Legislative Amendment Is Undertaken

The M&A Team recommended that further study be conducted prior to undertaking any legislative changes in the following areas:

- The Commission des valeurs mobilières du Québec (the "CVMQ") had issued a notice stating that it would be asking the Canadian Securities Administrators (CSA) Take-over Bid Committee to consider whether the take-over bid provisions should be extended to transactions that are not structured as take-over bids but that achieve the same result, such as arrangements. A further notice was subsequently issued by the CVMQ on this subject. The M&A Team believes that this subject requires thoughtful and thorough analysis before any legislative amendment is undertaken.
- The adequacy of the powers and remedies available to the OSC, generally, to regulate M&A transactions is a subject that requires further analysis before legislative amendment is undertaken.

Further Study Required But Legislative Amendment Unnecessary As Adequate Rule-Making Authority Exists

There are a number of other issues concerning M&A transaction regulation that the M&A Team identified as requiring further consideration. To the extent that the study of these issues results in the need for regulatory reform, the M&A Team believes that such reform could be effected through the implementation of rules for which adequate rule-making authority currently exists.

Some of the issues discussed in the submission are summarized below:

- Certain bids made in accordance with foreign laws are exempt from regulation under the Act if the target company has very few Ontario shareholders or if they hold a very small percentage of its shares. Should this "de minimis threshold" in the Act exempting foreign bids from the application of the Act be increased, and if so, to what level?
- Is the OSC's policy on defensive tactics, including its approach to shareholder rights plans (or poison pills), appropriate, and if not, what changes should be made?
- Is additional regulation necessary in respect of communications made in the context of M&A transactions, and if so, what form should that regulation take?
- Are the time frames and methods for delivery of disclosure documents in the context of M&A transactions appropriate, and if not, what changes should be made?
- Do the provisions relating to a prospective bidder's accumulation of a target company's shares prior to public announcement of the transaction require revision, and if so, what form should that revision take?
- Is additional public disclosure necessary in respect of agreements or arrangements that affect control of an issuer or contain provisions that have material consequences in the event of a change of control?

- Is greater precision desirable in respect of the disclosure required in M&A transactions where shares are being issued?
- A bidder that makes a formal cash bid is required to have "adequate financing arrangements" in place prior to the commencement of the bid. Is there a need to clarify this requirement and, if so, how should it be clarified?
- Is there a need to regulate the types of conditions to which a bid may be subject?
- Should the OSC codify certain kinds of routinely-granted discretionary exemptions from the formal bid requirements?

The M&A Team recognized that the submission raised a number of issues that may be beyond the scope of the Five Year Review Committee's agenda. The issues were raised, nevertheless, for the Five Year Review Committee to consider as it saw fit. A path forward for the Five Year Review Committee might be to focus on those two issues for which the M&A Team has recommended legislative amendments, while leaving the other issues for separate study and analysis. The M&A Team believes that such a separate study and analysis ultimately should be undertaken to ensure that Ontario's regulation of M&A transactions meets only one standard - the standard of excellence.

The M&A Team noted that a number of the issues raised in the Five Year Review Committee's request for comments dealt with the globalization theme and, in the M&A Team's view, appropriately so. If Ontario is to gain its fair share of invested global capital it must have securities regulation that is, and is perceived to be, investor-friendly on a global comparative basis. In order to attract and retain issuers, such regulation also must be as issuer-friendly as possible. The M&A Team indicated that, although balancing these sometimes conflicting objectives can be difficult, it is imperative that such a balance be achieved as part of the five-year review process and on an ongoing basis.

The M&A Team also noted that, although the Canadian capital markets are relatively sophisticated, they also are relatively small. From a global perspective, issuers and investors will avoid the Canadian capital markets if the cost of compliance with securities regulation outweighs the benefits. The M&A Team recognizes this and works closely with its colleagues in other CSA jurisdictions in an effort to ensure that the securities regulation of M&A transactions in Canada is as seamless as possible. Accordingly, to the extent Ontario reform is undertaken in the securities regulation of M&A transactions, it would be necessary to seek to have such changes made nationally.

For more information, please call any of the following members of the M&A Team: **Janet Holmes**, Senior Legal Counsel, (416) 593-8282; **Terry Moore**, Legal Counsel, (416) 593-8133; or **Naizam Kanji**, Legal Counsel, (416) 593-8060.

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Rules and Policies

The following Rules and Policies were delivered to the Minister of Finance. If the Minister does not approve or reject the Rule or return the Rule for further consideration, or if the Minister approves the Rule, it will come into effect on the date indicated.

General Prospectus Requirements

OSC Rule 41-501, Form 41-501F1 Information Required In a Prospectus, Form 41-501F2 Authorization of Indirect Collection of Personal Information, Form 41-501F3 Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process, Form 41-501F4 Non-Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process, and Companion Policy 41-501CP

Effective date: December 31, 2000

The Rule consolidates various provisions currently set forth in the Regulation to the Act and in various policy statements and notices and in the Commission Staff Corporate Finance Accountants Practice Manual concerning the preparation, certification, filing and receipting of preliminary prospectuses and prospectuses. The Rule prescribes the use of Form 41-501F1 as the form of prospectus to be used by issuers that currently file long form prospectuses using Forms 12, 13 or 14 of the Regulation.

Non Resident Advisers

OSC Rule 35-502

Effective date: November 18, 2000.

The Rule provides certain exemptions from section 25 of the Act for non-resident persons or companies regarding their advisory activities in Ontario, where the public interest doesn't require registration. The Rule also provides certain non-resident persons or companies with exemptions from certain requirements applicable to applicants for registration or registrants in the category of international investor (investment counsel, investment counsel and portfolio manager or securities advisor).

Prospectus Disclosure Requirements

National Instrument 41-101

Effective date: December 31, 2000

The Instrument consolidates the prospectus disclosure requirements currently set forth in National Policy Statement No. 12 Disclosure of "Market Out" Clauses in Underwriting Agreements in Prospectuses, National Policy Statement No. 13 Disclaimer Clause on Prospectus, National Policy Statement No. 32 Prospectus Warning Re: Scope of Distribution, and National Policy Statement No. 35 Purchaser's Statutory Rights, as well as similar prospectus disclosure requirements in the securities legislation of certain provinces.

Short Form Prospectus Distributions
National Instrument 44-101, Forms 44-101F1, 44-102F2 and 44-101F3 and Companion Policy 44-101CP
Proposed effective date: December 31, 2000

The Instrument prescribes conditions for the use of a short form prospectus to distribute securities to the public. It replaces National Policy Statement No. 47 Prompt Offering Qualification System, which has governed the use of a short form prospectus in CSA jurisdictions other than Quebec since 1993.

AIF and MD&A
OSC Rule 51-501 and Companion Policy 51-501 CP
Proposed effective date: January 1, 2001

The Rule reformulates Policy 5.10 Annual Information Form and Management's Discussion and Analysis of Financial Condition and Result of Operations, which has been rescinded effective May 31, 2001. The Rule also introduces a requirement for MD&A to be provided in relation to interim financial statements.

Financial Statements
OSC Rule 52-501 and Companion Policy 52-501 CP

The Rule reformulates section 7 to 11 of the Regulations to the Act which set out the content requirements of interim and annual financial statements.

Exempt Distributions

In order to make the regulation of the exempt market consistent with the needs of that market and its investors, the Commission has published a proposed rule on Exempt Distributions that would introduce several new registration and prospectus exemptions for small business financings.

The new exemptions are:

The Closely-Held Issuer Exemption – permits issuers to raise a total of $3.0 million, through any number of financings, up to 35 investors (excluding employees who acquire securities under a compensation or incentive plan).

The Family Member Exemption – allows issuers to issue securities on an exempt basis to spouses, parents, grandparents or children of its officers, directors and promoters.

The Accredited Investor Exemption – permits issuers to raise any amount at any time from any person or company that meets specified qualification criteria.

For more information, please call **Margo Paul**, Manager, Corporate Finance Branch, (416) 593-8136, **Iva Vranic**, Manager, Corporate Finance Branch, (416) 593-8115, or **James McVicar**, Legal Counsel, Corporate Finance Branch, (416) 593-8154.

September 8 (2000) 23 OSCB page 6205

Communication with Beneficial Securities Owners

The CSA have proposed changes to a Proposed National Instrument 54-101 on Communication with Beneficial Owners of Securities of a Reporting Issuer. This is the third draft of the proposed National Instrument and Companion Policy. They continue, with some changes, the regulatory regime currently embodied in National Policy Statement No. 41, which the instruments will replace.

For more information, please call **Robert F. Kohl**, Senior Legal Counsel, Corporate Finance, (416) 593-8233.

Sept. 1 (2000) 23 OSCB page 5937

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

Review of Revenue Recognition Practices

The OSC has launched a review of revenue recognition practices used by Canadian public companies.

The review by the OSC's Continuous Disclosure Team aims to identify whether the accounting practices adopted by Canadian issuers for recognizing, measuring and disclosing revenue reflect an appropriate application of the standards set out in the Canadian Institute of Chartered Accountant's Handbook and other generally accepted accounting principles.

In a letter sent to a sample of approximately 70 Canadian companies, the OSC has asked for a detailed explanation of how the company applies revenue recognition policies in its financial statements. Staff has asked that the material should include the following information:

- for revenue recognition on the sale of goods, an explanation of how the company deals with retained risks or obligations; including a customer's right of return, obligations under maintenance contracts, or obligations to provide complimentary upgrades;
- a description of how revenue is accrued for service contracts;
- whether any portion of the Company's reported revenue represents the "gross" amount of sales transactions in which the Company acts essentially as an agent or broker rather than as principal and for which it is compensated on a commission or fee basis;
- whether, and if so how, the Company compares its revenue recognition accounting practices with those applied generally within the industry in which it operates or by specific companies within that industry. The revenue recognition project is part of the Continuous Disclosure

Team's comprehensive review of selected accounting and disclosure practices.

The Commission plans to issue a summary of its findings and recommendations early next year.

For more information, please call **John Hughes**, Manager, Continuous Disclosure, (416) 593-3695 or **Irene Tsatsos**, Sr. Accountant, Continuous Disclosure, (416) 593-8223.

OSC/CARP Conference Series

To better equip seniors with information about the changing marketplace and regulatory environment, the Commission recently partnered with the Canadian Association of Retired Persons (CARP) to offer a series of conferences in seven communities across Ontario. With a membership of over 250,000 in Ontario, CARP's mandate is to effectively promote the rights and quality of life of mature Canadians.

Conference seminars highlighted the fundamentals of investor protection. Conference participants learned more about regulatory safeguards (from simplified disclosure to the planned merger between the OSC and Financial Services Commission of Ontario (FSCO)). Later, the audience was alerted to the telltale signs – or RED FLAGS – of investment fraud. At which time participants were appraised of practical ways to handle situations where they may be targeted by investment con-artists. Local law enforcement officers were on-hand to address other types of fraud and scams and how seniors can protect themselves and their money.

Among the OSC's Investor Education Programs, Investor Outreach has been targeted for expansion.

For More information please call **Alicia Ferdinand**, Investor Education Officer (416) 593-8307or to receive additional material on investing please call (416) 593-8314.

Canadian Venture Exchange Exemption From Recognition

Material relating to the Canadian Venture Exchange's (CDNX) application for exemption from recognition as a stock exchange in Ontario have been published in the OSC Bulletin (September 1, 2000 edition). These include an order granting CDNX a temporary exemption from recognition, and a proposed final order exempting CDNX from recognition.

CDNX is a recognized exchange in Alberta and British Columbia. Staff of the Alberta Securities Commission, the British Columbia Securities Commission and the OSC have developed a Memorandum of Understanding regarding oversight of CDNX. As lead regulators, the ASC and BCSC would have an obligation to report to the OSC on their oversight activities quarterly as well as annually to the CSA Chairs.

"All CDNX issuers must determine whether they meet the significant connection test by June 30, 2001."

Since CDNX issuers are likely to have many Ontario investors, the proposed Order maintains some of the investor protections that go with Ontario reporting issuer status, such as the continuous disclosure requirements. As well, CDNX has proposed rules and provisions that would require each CDNX listed issuer with a "significant connection" to Ontario to become a reporting issuer in Ontario. The amendments will take place June 30, 2001.

All CDNX issuers must determine whether they meet the significant connection test by June 30, 2001. If an issuer does, it must promptly apply to be deemed a reporting issuer in Ontario and must achieve that status within six months of June 30. On an ongoing basis, all CDNX issuers must assess annually whether they meet the test, and if so, must become Ontario reporting issuers.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257, **Margo Paul**, Manager, Corp. Finance, (416) 593-8136, **Jennifer Elliott**, Legal Counsel, Market Regulation, (416) 593-8109.

Sept. 1 (2000) 23 OSCB page 5884

Stock Swap Scam

The OSC is warning investors about a two-stage stock scam involving worthless stock, "swaps" and salespeople claiming to represent legitimate US companies.

Stage One:

- An investor is solicited by someone purporting to work for a brokerage house, offering an incredible deal on a stock described as a once in a lifetime investment – usually a US-based micro-cap stock worth fractions of a cent.
- The brokerage house, holding a large block of the stock, actively promotes it to drive the price up. Once a number of investors have overpaid for the stock, the brokerage house ceases to support the market for the stock and the stock's value falls dramatically.
- When the victim tries to contact the brokerage or the company, the brokerage house no longer exists and the issuer refuses to answer questions. The investor is left holding worthless stock for which there is apparently no demand.

Stage Two:
The investor is victimized again if he or she is duped into the second stage of the scam.

- The investor receives another solicitation from someone posing as a sales representative of a legitimate sounding company. In a recent scam, a person lied to the victim by claiming that he worked for Money Concepts Capital Corporation, a bona fide corporation.

"The sales representative proposed that the victim swap the worthless stock for blue chip stocks."

- The sales representative told the victim that he represented a group of clients who had heavy tax burdens and who wished to acquire stocks that had recently declined, supposedly enabling the clients to claim capital losses against capital gains. The sales representative proposed that the victim swap the worthless stock for blue chip stocks, valuing the victim's stocks at the price the victim paid.
- However, since a block of the blue chip stock was priced higher than the value of the victim's micro-cap stock, the victim was required to pay an amount of money to cover the difference. The victim in one case sent a check to an account at a New York branch of the HSBC Bank where the suspect held an account. The victim did not receive the blue chip stock – and thus was swindled again.

For more information, please call **Rowena McDougall**, Senior Communications Officer, (416) 593-8117.

Sept. 15 (2000) 23 OSCB page 6359

Temporary Exemption of ME from Recognition

The OSC is currently reviewing the Montreal Exchange's (ME) formal application to be recognized as an exchange under s.21 of the Act and s.15 of the *Commodity Futures Act*. In order to allow the ME to carry on business in Ontario, on September 26, 2000 the Commission granted a temporary exemption from the requirement to be recognized.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257, or **Jennifer Elliott**, Legal Counsel, Market Regulation (416) 593-8109.

October 6 (2000) 23 OSCB page 6862

Going Final by Year-end

As in previous years, Commission staff have advised that there can be no assurance that the review of a long-form prospectus will be completed and the necessary receipt issued before December 31, 2000 if the preliminary prospectus has not been filed on or before November 1, 2000.

Similarly, preliminary prospectuses filed for a new mutual fund should have been filed before November 1, 2000 to receive receipt before year end. Pro forma prospectuses for existing mutual funds must be filed within the time periods set by securities legislation.

For more information, please call **Paul Dempsey**, Assistant Manager/Senior Legal Counsel, Investment Funds, Capital Markets, (416) 593-8091, **Margo Paul**, Manager, Corporate Finance, (416) 593-8136, or **Iva Vranic**, Manager, Corporate Finance, (416) 593-8115.

October 13, (2000) 23 OSCB page 6894

Recognition of Certain Exchanges

Every purchase or sale of a security made by a registered dealer must be reported to the designated trade reporting facility (the Canadian Unlisted Board – CUB), except trades made through a Canadian stock exchange or a stock exchange or organized market recognized by the Commission.

On October 6, the Commission announced its recognition of the following for the purpose of excluding trades from these trade reporting requirements: NASDAQ; the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited; and all stock exchanges outside of Canada that require participants to report details of transactions and publish details.

October 13 (2000) 23 OSCB page 6985

Investor Alert - Prime Bank Investment Schemes

The OSC and the RCMP have issued a warning to investors about legitimate sounding offers like Prime Bank Notes and Prime Bank Debentures used as a means to lure individuals into illegal investment scams.

In particular the OSC and the RCMP are warning investors of the following:

The use of official sounding terms, such as Prime Bank Notes, Prime Bank Debentures or Roll-Over Programs. These instruments typically take the form of notes, debentures, letters of credit, bank purchase orders, zero coupon bonds, or guarantees. The word "Prime" is meant to refer, generically, to reputable financial institutions (i.e., world banks) who supposedly issue these investments. These schemes sometimes claim affiliations with major international organizations, like the International Chamber of Commerce (ICC) and International Monetary Fund (IMF). Both these organizations deny having any association with these types of international investment programs.

Persons promoting these schemes lead prospective investors to believe that they are being allowed to participate in an otherwise secret trading regime. Investors might be required to sign non-disclosure and non-circumvention agreements which prevent them from disclosing to any persons the identity of the parties involved in the investment programs and the terms of the transactions. Often some part of the schemes would be transacted through a country regarded as a secrecy haven. This "offshore secrecy" feature conceivably enables investors to avoid paying any taxes on proposed investment returns.

Promises made to investors of above average returns or guarantees of unrealistic rates of return within a short period of time (e.g. 20% return per month), completely risk free.

Legal-looking documents which often use technical language are used in an attempt to confuse investors into believing their investments are worthwhile. They may make reference to trading programs, like a forfaiting program (also called forfeiting program), high yield cash trading program, or high yield investment program (HYIP). Little or no information is provided to investors about the specifics of the prospective trading programs utilized (i.e. how investors returns are generated).

Monetary rewards are provided to investors already involved in the schemes to encourage them to induce others to invest. Many individuals brought into these schemes are relatives or friends of the initial investors and as such, are less sceptical of the investments because they trust the family members/friends who made the referrals.

The OSC and the RCMP would like to remind investors that when in doubt about the legitimacy of a proposed investment, one can usually rely on the basic principle of investing: If it sounds too good to be true, it probably is!

Anyone solicited to invest in a prime bank investment scheme, or anyone having information about this or a similar scheme, should contact the Commercial Crime Section of their local RCMP division and the OSC or their local securities regulatory authority.

For more information, please call **Rowena McDougall**, Senior Communications Officer, (416) 593-8117.

Exemptive Relief and Year-end

All applications for exemptive relief for the period preceding year-end should have been filed before November 10, 2000 or November 30, 2000 in the case of applications relating to takeover bids, if exemptive relief is required before December 31, 2000. While every effort will be made to meet reasonable deadlines, if the application is filed after this date there is no assurance that the application will be reviewed or the necessary relief provided before year-end.

For more information, please call **Margo Paul**, Manager Corporate Finance, at (416) 593-8136 or **Iva Vranic**, Manager Corporate Finance, (416) 593-8115.

Oct. 20 (2000) 23 OSCB page 7086

Commissioners Update

John (Jack) Geller has been named a part-time Commissioner effective of Nov. 1, 2000. Mr. Geller resigned as vice chair of the OSC on Oct. 31, 2000 a position he has held since Nov. 1993. He acted as Interim Chair of the Commission from Nov. 1996 to April 1998.

Mr. Geller was appointed a Queen's Counsel in 1967, and was a Senior Partner at the law firm of Fasken Campbell Godfrey until 1993.

John (Jake) Howard and **Morley Carscallen** are retiring as Commissioners of the OSC. Mr. Carscallen has served since 1992, and was a vice-chair of the OSC from July 1996 to November 1998. Mr. Howard was appointed a Commissioner in 1996.

The OSC expresses its appreciation for the dedicated service of Mr. Carscallen and Mr. Howard.

Staff Update

Frank Switzer has been named Director of Communications. He leads the OSC's efforts in the areas of Public and Media Relations, Investor Education and public inquiries through the OSC Contact Centre.

Prior to joining the OSC, Mr. Switzer worked in corporate communications for a major infrastructure development company in the private sector. He also has experience in the public sector, serving as a communications advisor to a provincial Cabinet Minister and the Leader of the Official Opposition.

Randall Powley, an economist with 15 years experience in the capital markets, has joined the OSC as Chief Economist, a newly created position. For the past 11 years he has been forecasting the Canada/U.S. economies for a major investment dealer. Mr. Powley was the author of *New Economy.ca A Risk Reward Trade-Off* which appeared in the Summer 2000 edition of Perspectives.

George Gunn has been named Manager, Surveillance, Enforcement Branch. Mr Gunn joined the Commission in December 1992 as an investigator and held the positions of Lead Investigator and Senior Investigator before his appointment. Mr. Gunn was a member of the RCMP for twenty-two years mostly in the Commercial Crime Section where he specialized in stock market frauds before joining the OSC.

Michael Hubley has been appointed the Assistant Manager, Investigations in the Enforcement Branch. Mr. Hubley joined the OSC in 1997 after a 23-year career with the RCMP. When he left the RCMP, Mr. Hubley was in charge of the Stock Market and Securities Unit in Toronto.

CANADIAN SECURITIES ADMINISTRATORS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada.

Proposals to Ease Transition to the MFDA

In order to help mutual fund dealers and their salespersons make a smooth transition to the MFDA, the proposed new self-regulatory organization for mutual fund dealers, the CSA is supporting proposed amendments to the MFDA draft by-laws.

The proposed amendments address a number of issues including: commission payments to unregistered corporations, bulk transfers, financial planning activities, the use of trade names, capital requirements and financial institutions bond coverage.

The proposed amendments were developed after extensive consultation with industry associations and direct meetings with mutual fund dealer representatives. They have been transmitted to the MFDA in a letter from Douglas M. Hyndman, Chair, Canadian Securities Administrators.

For more information, please call **Toni Ferrari**, Manager, Compliance, 416) 593 3692 or **Antoinette Leung**, Sr. Accountant, Compliance, (416) 593-8901.

October 27 (2000) 23 OSCB page 7241

SEDI Implementation Date Postponed

The proposed implementation date for the System for Electronic Disclosure by Insiders (SEDI) has been postponed from December 4 to Spring 2001.

In June, 2000, the Canadian Securities Administrators published for comment proposed National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI). SEDI will facilitate the filing and public dissemination of insider reports through an internet web site.

Some commentators had expressed concerns that the proposed implementation date would not provide SEDI issuers and their insiders with sufficient time to prepare for electronic filing. In addition, some system development delays have occurred.

In addition to issuing materials on SEDI, the CSA will hold industry information seminars in various centres to explain the SEDI filing system, and will distribute an information and registration package to all reporting issuers.

For more information, please call **Cynthia Rogers**, Legal Counsel, Corporate Finance, (416) 593-8261 or **Heidi Franken**, Accountant, Corporate Finance (416) 593-8249.

OSCB Nov 17, page 7757

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information, please call the OSC at (416) 593-8314.

OSC commences proceedings against Wayne S. Umetsu
The Ontario Securities Commission ("OSC") issued a Notice of Hearing and Statement of Allegations against Wayne S. Umetsu. Mr. Umetsu is alleged to have taken approximately $80,000 in funds given to him by a client for purposes of trading in commodity futures and used them for his own personal benefit. It is also alleged he traded in commodity futures without being registered to do so and/or held himself out to be registered to trade in commodity futures. Mr. Umetsu's conduct is alleged to be in contravention of Ontario commodity futures law and the public interest.

The OSC ordered the hearing in this matter to commence on March 19, 2001 or as soon thereafter as a panel can be convened.

Noram Capital Management, Inc. and Andrew Willman
On July 10, 2000, the OSC issued a Notice of Hearing and Statement of Allegations against investment counsel portfolio manager Noram Capital Management, Inc. and Andrew Willman, Noram's President, Chief Executive Officer and Supervisory Procedures Officer. The allegations are as follows:

a) Noram made several representations in a variety of promotional materials, to investors which were misleading and/or ambiguous and contrary to the public interest;

b) Between February 1993 and October 7, 1999, Noram and Willman failed to deal fairly, honestly and in good faith with clients of Noram, did not act in the best interests of clients and otherwise acted contrary to the public interest;

c) Noram had been deficient in meeting its minimum capital requirements in amounts ranging up to $948,909 which was alleged to be contrary to the public interest and contravened the Act and Regulations thereunder;

d) Noram failed to comply with terms and conditions imposed on its registration by the Commission which required Noram to file certain financial information with the Commission on a monthly basis.

The OSC ordered the hearing of this matter to commence on February 5, 2001 or as soon thereafter as a Commission panel can be convened.

Application by David McIntyre for recognition as an exempt purchaser
A hearing was held before the OSC on October 16, 2000 to consider an application made by David McIntyre for recognition as an exempt purchaser under paragraph 35(1) of the Securities Act and a ruling pursuant to section 74 of

the Act exempting trades to Mr. McIntyre from the prospectus requirements set out in section 53 of the Act. The Commission denied Mr. McIntyre's application.

If the application was granted by the Commission, trades to Mr. McIntyre would be exempt from both the registration and the prospectus requirements of the Act. Both the registration and the prospectus requirements are designed to protect investors by ensuring that, unless an appropriate exemption is available or the Commission grants a specific exemption, a prospective investor in securities will have available the benefit of the advice of a registrant with respect to a proposed investment, and the information available in a prospectus to enable the proposed investor to make an investment decision on the basis of all the relevant facts.

Mr. McIntyre asked us to craft a new general exemption from the registration and prospectus requirements of the Act, based on exemptions available in the United States. The Commission does not think that it is appropriate for such a general exemption to be crafted in the course of dealing with a particular application for recognition as an exempt purchaser or for an exemption from the prospectus requirements of the Act. But such an exemption, if appropriate, should be dealt with under the Commission's policy-making or rule-making authority.

Settlement agreement – Russell Millard

On November 13, 2000, the OSC approved a settlement entered into between staff of the Commission, and Russell Millard, a former mutual funds salesperson of CCI Capital Limited. The Commission ordered that:

1) the Settlement Agreement dated October 27, 2000 is hereby approved;

2) pursuant to clause 6 of subsection 127(1) of the Act, Russell Millard is hereby reprimanded;

3) pursuant to clause 1 of subsection 127(1) of the Act, the registration granted to Millard under the Ontario securities law will be suspended for a period of 21 days from the date of the Commission's Order.

Mark Bonham, StrategicNova Funds Management Inc. and Bonham & Co.

On November 6, 2000, the OSC approved a settlement agreement entered into between staff of the Commission and StrategicNova Funds Management Inc. A pre-trial conference will be held on or before December 31, 2000 with respect to proceedings against Mark Bonham and Bonham & Co., at which time a hearing date will be set.

The Commission made an order:

1) The Settlement Agreement dated November 6, 2000 in respect of StrategicNova is hereby approved;

2) StrategicNova will, on or before December 31, 2000, make a payment of $10,000.00 to the Commission as its contribution to the costs of the investigation and hearing of this matter;

3) StrategicNova will submit to a review of the valuation practices and procedures involving the Strategic Value Fund, Canadian Equity Value Fund and Dividend Fund. Such a review is to be performed by a third party (the "expert") approved by staff at StrategicNova's expense and will implement such reasonable changes as are recommended by the expert in a report within reasonable time frames set out by the expert after consultation with StrategicNova. StrategicNova will provide staff with a copy of the report and the recommendations of the expert and with progress reports concerning the implementation of the expert's recommendations;

4) StrategicNova will submit to a review of the manual prices used in the calculation of net asset value per share for any day during the period July 1, 1998 to September 30, 2000 inclusive on which manual pricing occurred in any relevant mutual fund.

5) If, as a result of the reviews set out in paragraphs (d) and (e), it is determined that the fund values and/or published results, communicated either to the public or to individual clients, were materially misstated, then StrategicNova will restate such fund values and make any required restitution to any relevant mutual fund; and

6) StrategicNova is hereby reprimanded.

Southwest Securities Inc.

On September 15, 2000, the OSC issued a Notice of Hearing and Statement of Allegations against Southwest Securities Inc.

Southwest is a Texas corporation that is a member of the New York Stock Exchange and the National Association of Securities Dealers. Southwest provides securities transaction processing services to dealers around the world, including Swift Trade Securities Inc., an Ontario securities dealer.

Staff of the Commission alleged that Southwest, which is not registered with the Commission, is engaging in activity that requires registration under Ontario securities law. Staff is seeking an order prohibiting Southwest from trading in securities in Ontario.

Application for registration of Joseph Curia denied

The decision of the Director was to refuse the request by Joseph Curia for reinstatement of his registration as a salesperson. The Director's reason was the applicant was previously employed as a salesperson at A.C. MacPherson Company Inc. from 1994 until 1999. On April 3, 2000, the Commission approved a settlement agreement, which among other sanctions, resulted in the winding up of MacPherson. The settlement was presented to the Commission for consideration as a result of high mark ups charged to its clients by MacPherson. In MacPherson and in other cases, the Commission has established that a principal sale by a dealer at excessive mark-ups is a breach of the duty a registrant owes to its client.

The Director found that registered salespeople owe a statutory duty to act fairly, honestly and in good faith with their clients. This duty requires a salesperson to be informed of the sales practices of the firm where he or she is employed. Where those practices involve high mark ups, a salesperson who participates in that practice will not be acting fairly or in good faith with his or her clients. Accordingly, his application for registration was denied.

Dual Capital Management Limited, Warren Lawrence Wall and Shirley Joan Wall

On October 30, 2000, the Honourable Judge J.J. Douglas of the Ontario Court of Justice sentenced Warren Lawrence Wall to a prison term for a total of 30 months (18 months in relation to the distribution of securities; and 12 months in relation to trading in securities, contrary to Ontario securities law), and Shirley Joan Wall to a prison term for a total of 22 months (13 months in relation to the distribution of securities; and 9 months in relation to trading in securities, contrary to Ontario securities law). A fine in the amount of $1,000,000 was imposed against Dual Capital Management Limited, the general partner of Dual Capital Limited Partnership. During the period from October 1994 to December 1996, Dual Capital Management Limited, Warren Wall and Joan Wall sold units in Dual Capital Limited Partnership to 49 investors residing throughout Ontario and raised funds in the amount of approximately U.S. $1,500,000. Warren Wall and Joan Wall are officers and directors of Dual Capital Management Limited.

In passing the sentence, the Hon. Judge J.J. Douglas stated the breaches of securities law at issue were at the heart of conduct the Ontario Securities Act seeks to prevent and should be punished accordingly. He further underscored the dishonesty and greed motive of Warren Wall and Joan Wall in the creation and operation of the investment scheme, as well as the vulnerability of the elderly investors from whom funds were solicited. After serving their prison terms, Warren and Joan Wall will be subject to a probation term of two years, requiring the Walls, among other things, to refrain from trading, distributing and promoting insurance products or securities.

RECENT SPEECHES

CLOSING THE CORPORATE CREDIBILITY GAP:

Building Market Confidence in a competitive World

by David A. Brown, Chair
Ontario Securities Commission

Insight Conference - Roundtable on Corporate Governance in Canada October 17, 2000

Are we helping our market participants compete globally? In other words, what are we doing to ensure that investors have reason to place confidence in Canadian listed companies?

- First, investor confidence depends on firm enforcement of securities regulation. We have to provide market participants with a continual reminder that failing to abide by the rules carries consequences. The OSC has dramatically increased the number of major investigations and enforcement initiatives. Less than halfway into our fiscal year, we have 270 cases on the go – almost twice as many as we had at the end of our 1997-98 fiscal year, the last period before we shifted to self-funding. The doubling of cases reflects a doubling of enforcement staff – from 40 to 80 in the past two years and the value of improved technology.

- Second, investor confidence depends on timely, quality disclosure in the secondary market. With the tremendous growth in retail investing – and the secondary market now accounting for 90 per cent of all securities transactions – it's crucial to mandate and monitor disclosure beyond the initial IPO.

"We anticipate that every Ontario issuer will be reviewed at least once every four years."

That's why the OSC has created a new Continuous Disclosure Team. We anticipate that every Ontario issuer will be reviewed at least once every four years. (Selection for review will be on a risk basis. Some issuers will be reviewed more often than that.) For each company selected, the Team will review and test the timely disclosure of all events in its recent history -- plus annual reports, website postings, and even public comments by senior officers. One of the team's first projects has been to review disclosure practices. Few companies seem to have safeguards against selective disclosure.

Late last year, we surveyed 400 companies. We found that three-quarters of them did not have written corporate disclosure policies --including almost half of those with market caps greater than half a billion dollars.

Regulatory Compliance for Financial Institutions

By Howard Wetston, Vice Chair
Ontario Securities Commission

The Canadian Institute
November 21, 2000

Rather than adhere to outmoded divisions between sectors, a more rationale division of regulatory authority would be based on the goals and objectives we wish to achieve. It makes more sense to base the regulatory division of responsibilities between two forms of regulation – prudential regulation and market regulation.

Prudential regulation is aimed at controlling risk in the financial system, and promoting its efficiency and soundness. As is the case with the federal Office of the Superintendent of Financial Institutions and the Federal Deposit Insurance Corporation, the goal of prudential regulation is to reduce the risk of an insolvency of a financial institution, and ensure that the insolvency of one institution does not cause other financial institutions to fail.

"Market regulation includes making sure that the capital markets and market participants operate in a way that is fair, transparent, and efficient"

Market regulation, on the other hand, is aimed at protecting consumers and maintaining the efficiency and integrity of the marketplace. That includes making sure that the capital markets and market participants operate in a way that is fair, transparent, and efficient, and that individual customers are protected from unfair, improper or fraudulent practices.

Market regulation includes requirements regarding disclosure about attributes of investments, issuers and conflicts of interest, and standards for industry professionals. It includes rules to protect customer funds and assets, and supervision of securities markets to ensure fair and efficient operations.

These characteristics of market regulation are intrinsic to both the OSC and the Financial Services Commission of Ontario. This common element forms one of the basic underpinnings of the reasoning behind merging the two agencies.

The new entity – the Ontario Financial Services Commission – will provide a regulatory structure based on the kind of regulation the financial service sector needs today, rather than the nature of a particular industry decades ago. It will facilitate the administration of market regulation without artificial walls or outdated barriers. It will eliminate the mismatch between regulation and reality.

(Statutory Civil Remedy for Investors)

Reliance
Investors would have the right to sue whether or not they had actually relied on the misrepresentation or the failure to make timely disclosure. This provision parallels the prospectus civil liability provisons. It is intended to remove the necessity to prove reliance in order to reflect the fact that parties may often suffer damage indirectly because of the effect a misrepresentation has on the market price of a security

Screening Mechanism and Court Approval of Settlement Agreements
To limit frivolous litigation or strike suits, plaintiffs would be required to obtain leave of the court to commence an action. In granting leave, the court would have to be satisfied that the action is being brought in good faith, and has a reasonable possibility of success. There would also be a requirement for court approval of any proposed settlement of an action.

"Investors would have the right to sue whether or not they had actually relied on the misrepresentation."

The proposed legislation arose out of the CSA's review and support of The Toronto Stock Exchange Committee on Corporate Disclosure (known as the Allen Committee) final report issued in 1997. The Allen Committee was established to review continuous disclosure by public companies in Canada and assess the adequacy of such disclosure. The Allen Committee was also asked to consider whether additional remedies should be available, either to regulators or to investors, if companies fail to observe the continuous disclosure rules.

Possible defences
The issuer and other potential defendants would have several possible defences. For some types of disclosure, the person has a defence if he or she conducted due diligence. For other types of disclosure, the person is not liable unless the plaintiff proves that the person knew about the misrepresentation in the document, deliberately avoided acquiring knowledge or was guilty of gross misconduct in making the statement containing the misrepresentation.

Limited exposure for issuers
The proposed legislation would limit the potential exposure of issuers and other potential defendants, depending on their category. For an issuer, the liability cap is set at the greater of $1 million or 5% of market capitalization. For potential defendants other than the issuer, the liability caps do not apply if the person "knowingly" made the misrepresentation or "knowingly" failed to make required timely disclosure.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245 or **Rossana Di Lieto**, Legal Counsel, (416) 593-8106.

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